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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 197 (C. 17)**

**MENTAL HEALTH**

**The Mental Health (Scotland) Act 2015 (Commencement  
No. 4 and Transitional and Savings Provisions) Order 2017**

<i>Made</i>	- - - -	<i>9th June 2017</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>13th June 2017</i>
<i>Coming into force</i>	- -	<i>30th June 2017</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by section 61(2) and (3) of the Mental Health (Scotland) Act 2015(1) and all other powers enabling them to do so.

*PRELIMINARY*

**Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the Mental Health (Scotland) Act 2015 (Commencement No. 4 and Transitional and Savings Provisions) Order 2017 and comes into force on 30th June 2017.

(2) In this Order—

“the Act” means the Mental Health (Scotland) Act 2015;

“the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003(2);

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(3).

(3) For the purposes of articles 3 to 18, 24 and 25, “the appointed day” means 30th June 2017.

(4) For the purposes of articles 19 to 23, “the appointed day” means 30th September 2017.

**Appointed day**

**2.**—(1) Subject to paragraph (2), the day appointed for the coming into force of the provisions of the Act specified in column 1 of the schedule (the subject matter of which is described in column 2 of the schedule) is the day specified in column 3 of the schedule.

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(1) 2015 asp 9.  
(2) 2003 asp 13.  
(3) 1995 c.46.

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(2) Where a purpose is specified in column 4 of the schedule, a provision mentioned in column 1 comes into force in accordance with paragraph (1) only for that purpose.

*TRANSITIONAL AND SAVINGS PROVISION*  
COMPULSORY TREATMENT ORDERS AND COMPULSION ORDERS

**Section 87A of the 2003 Act: further information where compulsory treatment order extended**

3. Despite the commencement of section 2 of the Act, section 87A (further information where order extended) of the 2003 Act<sup>(4)</sup> has no effect where the determination made by the responsible medical officer under section 86 (responsible medical officer’s duty to extend order) of that Act is made before the appointed day.

**Section 153A of the 2003 Act: further information on extension of compulsion order**

4. Despite the commencement of section 50 of the Act, section 153A (further information on extension of compulsion order) of the 2003 Act<sup>(5)</sup> has no effect where the determination made by the responsible medical officer under section 152 (further review: responsible medical officer’s duty to extend compulsion order) of that Act is made before the appointed day.

*EMERGENCY AND SHORT-TERM DETENTION*

**Emergency detention in hospital: exclusion for patients where section 113(5) of the 2003 Act applies**

5. Despite the commencement of section 4 of the Act, the amendments made by subsection (3) of that section to section 38 (duties on hospital managers: examination, notification etc.) of the 2003 Act have no effect where the emergency detention certificate referred to in section 38(1) of the 2003 Act has been granted before the appointed day.

**Section 46 of the 2003 Act: notification by hospital managers**

6. Despite the commencement of section 5 of the Act, the amendments made by subsection (3) of that section to section 46 (hospital managers’ duties: notification) of the 2003 Act have no effect where the short-term detention certificate referred to in section 46(1) of the 2003 Act has been granted before the appointed day.

*SUSPENSION OF ORDERS AND MEASURES*

**Section 43 of the 2003 Act: suspension of orders during emergency detention**

7. Despite the commencement of section 7 of the Act, the amendments made by that section to section 43 (effect of subsequent emergency detention certificate on compulsory treatment order) of the 2003 Act have no effect where the emergency detention certificate referred to in section 43(1) (b) of the 2003 Act is granted before the appointed day.

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(4) Section 87A is inserted by section 2 of the Mental Health (Scotland) Act 2015 (asp 9, “the Act”).

(5) Section 153A is inserted by section 50(2) of the Act.

### **Section 56 of the 2003 Act: suspension of orders during short-term detention**

8. Despite the commencement of section 8 of the Act, the amendments made by subsection (2) of that section to section 56 (effect of subsequent short-term detention certificate on emergency detention certificate) of the 2003 Act have no effect where the short-term detention certificate referred to in section 56(1)(b) (effect of subsequent short-term detention certificate on compulsory treatment order) of the 2003 Act is granted before the appointed day.

### **Section 10 of the Act: suspension of detention and other measures**

9. Despite the commencement of section 10 of the Act—
- (a) the amendments made by subsection (2) of that section to section 127 (suspension of measure authorising detention) of the 2003 Act have no effect in respect of a certificate granted under section 127(1) of the 2003 Act before the appointed day;
  - (b) the amendments made by subsection (3) of that section to section 128 (suspension of other measures) to the 2003 Act have no effect in respect of a certificate which is granted under section 128(1) of the 2003 Act before the appointed day;
  - (c) the amendments made by subsection (4)(a) and (b) of that section to section 224 (patients subject to certain other orders and directions: suspension of measure authorising detention) of the 2003 Act have no effect in respect of a certificate granted under section 224(2) of the 2003 Act before the appointed day.

## *REMOVAL AND DETENTION OF PATIENTS*

### **Section 295A of the 2003 Act: notification of decisions under section 293 or 295**

10. Despite the commencement of section 19 of the Act—
- (a) subsections (1) and (2) of section 295A(6) (notification of decision under section 293 or 295) of the 2003 Act have no effect where the decision of the sheriff referred to in section 295A(1) is made before the appointed day;
  - (b) subsections (3) and (4) of section 295A of the 2003 Act have no effect where the decision of the sheriff referred to in section 295A(3) is made before the appointed day.

### **Section 299 of the 2003 Act: nurse's power to detain pending medical examination**

11. Despite the commencement of section 20 of the Act, the amendments made by that section to section 299 (nurse's power to detain pending medical examination) of the 2003 Act have no effect where a patient is detained under section 299(2) of the 2003 Act before the appointed day.

## *PERIODICAL REFERRAL OF CASES*

### **Periodical referral of cases: amendments made by section 21 of the Act**

12. Despite the commencement of section 21 of the Act—
- (a) the amendment made by subsection (2) of that section to section 101 (Tribunal's duty to review determination under section 86) of the 2003 Act has no effect where the "renewal day" defined in section 101(4) of the 2003 Act falls before the appointed day;

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(6) Section 295A is inserted by section 19(2) of the Act.

- (b) the amendments made by subsection (3) of that section to section 189 (reference to Tribunal by Scottish Ministers) of the 2003 Act have no effect where the “relevant day” defined in section 189(6) of the 2003 Act falls before the appointed day;
- (c) the amendments made by subsection (4) of that section to section 213 (reference to Tribunal by Scottish Ministers) of the 2003 Act have no effect where the “relevant day” defined in section 213(6) falls before the appointed day;
- (d) paragraph 13A(7) of schedule 2 (the Mental Health Tribunal for Scotland) of the 2003 Act continues to have effect where paragraph (a), (b) or (c) of this article applies.

### NAMED PERSONS

#### Named persons in respect of patients subject to relevant orders: savings and cessation

**13.**—(1) Despite the commencement of section 22 of the Act and the repeal of section 251(8) of the 2003 Act, any person who, before the appointed day, is a named person in relation to another person who is subject to a relevant order (“the patient”) by virtue of that section continues to be a named person in relation to the patient until any one of the events mentioned in paragraph (2) occurs.

(2) The events are—

- (a) the making of a declaration under article 15 by the patient;
- (b) where the patient is subject to a short-term detention certificate, the revocation of that certificate;
- (c) where the patient is subject to a compulsory treatment order, the revocation of that order;
- (d) where the patient is subject to a compulsion order, the revocation of that order;
- (e) where the patient is subject to a hospital direction or transfer for treatment direction, the revocation of that hospital direction or transfer for treatment direction under section 210(2) (revocation following responsible medical officer report), 212(3) or (4) (duty of Scottish Ministers to keep directions under review) or 215(5) (powers of Tribunal on reference under section 201(3), 211(2) or 213(2) or on application under section 214(2));
- (f) where the patient is subject to an interim compulsory treatment order, the revocation of that order (including the revocation by virtue of section 75 (effect of subsequent compulsory treatment order on interim compulsory treatment order) of the 2003 Act.

(3) In this article “relevant order” means—

- (a) a short-term detention certificate;
- (b) a compulsory treatment order;
- (c) an interim compulsory treatment order;
- (d) a compulsion order;
- (e) a hospital direction;
- (f) a transfer for treatment direction.

(4) This article ceases to have effect on 30th June 2018.

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(7) Paragraph 13A of schedule 2 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) was inserted by the Adult Support and Protection (Scotland) Act 2007 ([asp 10](#)). It is repealed by section 21(5) of the Act.

(8) Section 251 of the 2003 Act is repealed by section 22(2) of the Act.

### **Named persons acting under article 13(2): review of relevant order after 30th September 2017**

14.—(1) This article applies where, after 30th September 2017, a person continues to act as a patient’s named person (“the named person”) by virtue of article 13(1) in respect of a patient who is subject to a compulsory treatment order, compulsion order, hospital direction or transfer for treatment direction.

(2) Article 13(2) is to be read as including the following events:—

- (a) where the patient is subject to a compulsory treatment order, a review of the order under section 77(2) (first mandatory review) or 78(2) (further mandatory reviews) of the 2003 Act;
- (b) where the patient is subject to a compulsion order, a review of that order under section 139(2) (first review of compulsion order) or 140(2) (further reviews of compulsion order) of the 2003 Act;
- (c) where the patient is subject to a hospital direction or a transfer for treatment direction, a review of that direction under section 206(2) of the 2003 Act (review of hospital direction and transfer for treatment direction).

### **Named persons: declaration in relation to a named person acting under article 13**

15.—(1) This article applies where a person continues to act as a patient’s named person by virtue of article 13(1) after the appointed day.

(2) A person who has attained the age of 16 years (“the patient”) may make a declaration in accordance with paragraph (3) stating that a person specified in the declaration is not to be the patient’s named person.

(3) The declaration must be—

- (a) in writing;
- (b) signed by the patient; and
- (c) witnessed by a person mentioned in paragraph (4) (“the witness”) who certifies that, in the opinion of the witness, the patient—
  - (i) understands the effect of making the declaration; and
  - (ii) has not been subjected to any undue influence in making the declaration.

(4) The persons who may witness the declaration are—

- (a) persons providing independent advocacy services;
- (b) medical practitioners;
- (c) arts therapists, dieticians, occupational therapists, physiotherapists, practitioner psychologists and speech and language therapists registered with the Health and Care Professions Council;
- (d) persons employed in the provision of, or managing the provision of, a care service;
- (e) registered nurses;
- (f) social workers; and
- (g) solicitors.

(5) In this article—

“care service” has the meaning given by subsection (1)(a), (b), (d), (f), (g) and (j) of section 47 of the Public Services Reform (Scotland) Act 2010(9);

“Health and Care Professions Council” means the Council established by article 3 of the Health and Social Work Professions Order 2002(10);

“independent advocacy service” has the same meaning as in section 259(1) of the 2003 Act(11); and

“social worker” has the meaning given by section 77 of the Regulation of Care (Scotland) Act 2001(12).

#### **Appointment of named persons: amendments made by section 23 of the Act**

16. Despite the commencement of section 23 of the Act—

- (a) the amendment made by subsection (2) of that section to section 250 (nomination of named person) of the 2003 Act does not have effect in respect of a nomination made before the appointed day under section 250(1) of the 2003 Act;
- (b) the amendments made by subsection (3) of that section to section 257 (named person: Tribunal’s powers) of the 2003 Act do not apply where the application referred to in section 257(1) of the 2003 Act is made on or before the appointed day.

#### *ARRANGEMENTS FOR TREATMENT OF PRISONERS*

#### **Compulsory treatment of prisoners: amendments made by section 35 of the Act**

17. Despite the commencement of section 35(3) of the Act paragraph 1A(13) of schedule 3 (application of Chapter 1 of Part 7 to certain patients) of the 2003 Act has no effect where the requirement to make the application under section 63 of the 2003 Act (application for compulsory treatment order) by virtue of section 57(1) of that Act (mental health officer’s duty to apply for compulsory treatment order) arises before the appointed day.

#### *PROVISION OF INFORMATION BY THE COMMISSION*

#### **Provision of information by the Commission: amendments made by section 36 of the Act**

18. Despite the commencement of section 36 of the Act—

- (a) section 19 of the 2003 Act (statistical information) continues to have effect as it had effect immediately before the appointed day in respect of any direction made by the Scottish Ministers before the appointed day; and
- (b) any direction made by the Scottish Ministers under section 19 of the 2003 Act before the appointed day remains in force until revoked.

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(10) *S.I. 2002/254*. Article 3 was relevantly amended by section 214 of the Health and Social Care Act 2012 (2012 c.7). That section provided that the body then known as the Health Professions Council was to continue in existence and be renamed as the Health and Care Professions Council; subsection (2) substituted a new article 3(1) to refer to the Council by its new name.

(11) For the purposes of section 259(1), “advocacy services” has the meaning given by subsection (4) of section 259, and “independent” has the meaning given by subsection (5) of that section.

(12) 2001 asp 8. Section 77 was substituted by paragraph 9 of schedule 1 of the Public Services Reform (Scotland) Act 2010 (Consequential Modifications) Order 2011 (*S.S.I. 2011/211*). There are amendments to section 77 which are not relevant to this Order.

(13) Paragraph 1A is inserted in schedule 3 of the 2003 Act by section 35(3) of the Act.

## CRIMINAL CASES

### Periods for assessment orders: amendments made by section 40 of the Act

19. Despite the commencement of section 40 of the Act—
- (a) the amendments made by subsection (3) of that section to section 52F of the 1995 Act(14) (assessment order: supplementary) have no effect where the assessment order referred to in section 52F(1) of the 1995 Act is made before the appointed day;
  - (b) the amendments made by paragraph (a) of subsection (4) of that section to section 52G of the 1995 Act (review of assessment order) have no effect where the assessment order referred to in section 52G(1) of the 1995 Act is made before the appointed day;
  - (c) the amendments made by subsection (5) of that section to section 52H(15) to the 1995 Act (early termination of assessment order) have no effect where the assessment order referred to in section 52H(1) of the 1995 Act is made before the appointed day.

### Periods for treatment orders: amendments made by section 41 of the Act

20. Despite the commencement of section 41 of the Act—
- (a) the amendment made by subsection (3) of that section to section 52P of the 1995 Act(16) (treatment order: supplementary) has no effect where the treatment order referred to in section 52P(1) is made before the appointed day;
  - (b) the amendments made by subsection (4) of that section to section 52R(17) of the 1995 Act (termination of treatment order) have no effect where the treatment order referred to in section 52R(1) of the 1995 Act was made before the appointed day.

### Periods for short-term compulsion: amendments made by section 42 of the Act

21. Despite the commencement of section 42 of the Act—
- (a) the amendment made by subsection (3) of that section to section 53A(18) of the 1995 Act (interim compulsion order: supplementary) has no effect where the interim compulsion order referred to in section 53A(1) of the 1995 Act was made before the appointed day;
  - (b) the amendment made by subsection (5) of that section to section 54 of the 1995 Act (unfitness for trial: further provision) has no effect where the temporary compulsion order referred to in section 54(2B)(a)(19) of the 1995 Act is made before the appointed day.

### Periods for compulsion orders: amendments made by section 43 of the Act

22. Despite the commencement of section 43 of the Act—
- (a) the amendments made by section 43(3) of the Act to section 57B of the 1995 Act(20) (compulsion order authorising detention in hospital or requiring residence at place: ancillary provision) have no effect where the compulsion order referred to in section 57B(1) of the 1995 Act is made before the appointed day;

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(14) Sections 52F, 52G and 52H were inserted by the 2003 Act, section 130.

(15) Section 52H was amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), schedule 2(1), paragraph 2(a) and (b).

(16) Sections 52P and 52R were inserted by the 2003 Act, section 130.

(17) Section 52R was amended by the Criminal Justice and Licensing (Scotland) Act 2010, schedule 2(1), paragraph 3(a) and (b).

(18) Section 53A was inserted by the 2003 Act, section 131.

(19) Subsection (2B) was inserted by the 2003 Act, schedule 4, paragraph 8(b).

(20) Sections 57B and 57D were inserted by the 2003 Act, section 133.

- (b) the amendments made by section 43(4) of the Act to section 57D of the 1995 Act (compulsion order: supplementary) have no effect where the compulsion order referred to in section 57D(1) of the 1995 Act is made before the appointed day.

**Periods for hospital directions: amendments made by section 44 of the Act**

**23.** Despite the commencement of section 44 of the Act, the amendments made by subsection (3) of that section to section 59C(21) of the 1995 Act (hospital direction: supplementary) have no effect where the hospital direction referred to in section 59C(1) of the 1995 Act is made before the appointed day.

**Consequential repeals: section 49 of the Act**

**24.** Despite the commencement of section 49 of the Act, the repeal made by paragraph (a) of that section does not affect the validity of any order, or the detention of any patient which is authorised by any order, mentioned in section 9(1) of the Crime and Punishment (Scotland) Act 1997(22).

**Effect of revocation of restriction order: amendments made by section 52 of the Act**

**25.** Despite the commencement of section 52 of the Act the amendments made by that section to section 198(2) of the 2003 Act (effect of revocation of restriction order) have no effect where the circumstances referred to in section 198(1)(a) and (b) of the 2003 Act occur before the appointed day.

St Andrew's House, Edinburgh  
9th June 2017

*MAUREEN WATT*  
Authorised to sign by the Scottish Ministers

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(21) Section 59C was inserted by the 2003 Act, schedule 4, paragraph 8(b).

(22) 1997 c.48. Section 9 was amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), paragraph 66 of schedule 7.

## SCHEDULE

Article 2

<i>Column 1 Provisions of the Mental Health (Scotland) Act 2015</i>	<i>Column 2 Subject matter</i>	<i>Column 3 Appointed day</i>	<i>Column 4 Purpose</i>
Section 2	Information where order extended	30th June 2017	
Section 3	Transfer to another hospital	30th June 2017	
Section 4	Emergency detention in hospital	30th June 2017	
Section 5	Short-term detention in hospital	30th June 2017	
Section 6	Meaning of temporary compulsion	30th June 2017	
Section 7	Suspension of orders on emergency detention	30th June 2017	
Section 8	Suspension of orders on short-term detention	30th June 2017	
Section 9	Suspension of detention for certain purposes	30th June 2017	
Section 10	Maximum suspension of particular measures	30th June 2017	
Section 11	Specification for detention measures	30th June 2017	
Section 12	Transfer of prisoner to hospital unit	30th June 2017	
Section 13	Transfer from specified unit	30th June 2017	
Section 19	Notifying decisions on removal orders	30th June 2017	
Section 20	Detention pending medical examination	30th June 2017	
Section 21	Periodical referral of cases	30th June 2017	
Section 22	Named person not to be automatic	30th June 2017	
Section 23	Consent to being named person	30th June 2017	So far as not already in force except in so far as the amendment made to section 250 of the 2003 Act (nomination of named person) by section 23(2)(b) of the Act has effect in relation to

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<i>Column 1 Provisions of the Mental Health (Scotland) Act 2015</i>	<i>Column 2 Subject matter</i>	<i>Column 3 Appointed day</i>	<i>Column 4 Purpose</i>
			section 257A(7) and (8) of the 2003 Act (ability to act if no named person).
Section 24	Appointment of named person	30th June 2017	
Section 25	Ability to act if no named person	30th June 2017	
Section 26	Advance statements to be registered	30th June 2017	
Section 27	Information about advocacy services	30th June 2017	
Section 28	Communication at medical examination etc.	30th June 2017	
Section 29	Conflicts of interest to be avoided	30th June 2017	So far as not already in force
Section 30	Safeguarding the patient's interest	30th June 2017	
Section 31	Services and accommodation for mothers	30th June 2017	
Section 32	Cross-border transfer of patients	30th June 2017	So far as not already in force
Section 33	Dealing with absconding patients	30th June 2017	So far as not already in force
Section 34	Agreement to transfer of prisoners	30th June 2017	
Section 35	Compulsory treatment of prisoners	30th June 2017	
Section 36	Provision of information by the Commission	30th June 2017	
Section 38	Making certain orders in remand cases	30th June 2017	
Section 39	Detention under compulsion orders	30th June 2017	
Section 40	Periods for assessment orders	30th September 2017	
Section 41	Periods for treatment orders	30th September 2017	
Section 42	Periods for short-term compulsion	30th September 2017	

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<i>Column 1 Provisions of the Mental Health (Scotland) Act 2015</i>	<i>Column 2 Subject matter</i>	<i>Column 3 Appointed day</i>	<i>Column 4 Purpose</i>
Section 43	Periods for compulsion orders	30th September 2017	
Section 44	Periods for hospital directions	30th September 2017	
Section 45	Variation of interim compulsion orders	30th September 2017	
Section 46	Transfer of patient to suitable hospital	30th June 2017	
Section 47	Specification of unit	30th June 2017	
Section 48	Transfer from specified unit	30th June 2017	
Section 49	Consequential repeals	30th June 2017	
Section 50	Information on extension of compulsion order	30th June 2017	
Section 51	Notification of changes to compulsion order	30th June 2017	
Section 52	Effect of revocation of restriction order	30th June 2017	
Section 53	Clarification of meaning of compulsion order	30th June 2017	

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force provisions in Parts 1 and 2 of the Mental Health (Scotland) Act 2015 (“the Act”), in so far as they are not already in force. It also makes transitional and savings provision. The Order specifies two commencement dates: 30th June 2017 and 30th September 2017.

Parts 1 and 2 of the Act introduce various amendments to the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) and the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). The Criminal Justice (Scotland) Act 2003 (“the Criminal Justice Act”) is amended by Part 3 of the Act. Sections 40 to 45 of the Act (which make provision in respect of criminal cases to amend the 1995 Act) come into force on 30th September 2017. All other provisions specified in this Order come into force on 30th June 2017.

Articles 3 to 25 make transitional and savings provisions.

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By virtue of section 61(1) of the Act, section 17 and Part 4 (sections 61 and 62) came into force on 5th August 2015. Sections 14, 15, 16 and 18 of the Act, which make amendments to chapter 3 of Part 17 of the 2003 Act in respect of detention in conditions of excessive security, came into force on 16th November 2015. Section 37 of the Act creates a duty on the Scottish Ministers to carry out a review of the arrangements for investigating the deaths of patients with mental disorder; section 37 came into force on 24th December 2015. Sections 23(1) and (2), 29, 32, 33, 54 and 58 were brought into force for the purposes of allowing regulations to be made; those provisions came into force on 5th May 2017. The Act received Royal Assent on 4th August 2015.

#### **NOTE AS TO EARLIER COMMENCEMENT ORDERS**

*(This note is not part of the Order)*

The following provisions of the Mental Health (Scotland) Act 2015 have been brought into force by commencement order made before the date of this Order:—

<i>Provision</i>	<i>Date of Commencement</i>	<i>Instrument No.</i>
Sections 14, 15, 16 and 18	16th November 2015	<a href="#">2015/361</a>
Sections 23(1) and (2), 29, 32 and 33 (partially)	5th May 2017	<a href="#">2017/126</a>
Section 37	24th December 2015	<a href="#">2015/417</a>
Sections 54 and 58 (partially)	5th May 2017	<a href="#">2017/126</a>